

DETAILED ACTION

1. This communication is a First Action Non-Final on the merits. Claims 1-12, as originally filed, are currently pending and have been considered below.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 5, and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over MontanaMills.com (2003) in view of Price (2001).

As per claim 1, MontanaMills.com discloses "A method for operating a bakery cafe, comprising:

Mixing dough for use in baking artisan breads in a fresh dough facility that is positioned behind a partial-wall adjacent to a customer area, the partial-wall having a transparent portion through which the fresh dough facility is visible and being limited in height to allow conversations between a customer within the customer area and a baker operating within the fresh dough facility" (Visit Your Local Village Bakery; ¶ 2; via From the grinding of the flour to the mixing and hand kneading, baking and cooling, you can see Montana Mills Breads come to life all under one roof. The photo on this page displays a partial wall with a transparent portion through which the customers can view

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the facility. The height of the wall is such that the customers in the photograph can easily have conversations with the bakers);

“baking the artisan breads in an oven viewable from the customer area” (Visit Your Local Village Bakery; ¶ 2; via From the grinding of the flour to the mixing and hand kneading, baking and cooling, you can see Montana Mills Breads come to life all under one roof. If customers can see the baking and cooling then the oven in which the breads are baked must be in an area that is viewable from the customer area);

“moving at least a portion of the baked artisan breads to a display area viewable from the customer area” (Visit Your Local Village Bakery; The photograph shows a display area viewable from the customer area where the breads are stored after they are baked);

“accepting an order directed to purchasing at least one of the baked artisan breads; and fulfilling the order” (Visit Your Local Village Bakery; The photograph shows a woman standing in front of a cashier where she may be able to place and have a bread order fulfilled);.

MontanaMills.com, however, fails to disclose “shaping and scoring dough”. Price discloses a recipe for cookies in which the dough is shaped and scored (pg. 4, Lavender Shortbread; via to shape cookies, roll dough into balls of the desired size. Score dough into cake pans).

Therefore it would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the bakery of MontanaMills.com to include

"shaping and scoring dough" as disclosed by Price since shaping and scoring dough is a practice commonly used in baking.

As per claim 5, MontanaMills.com further discloses "the display area comprises shelving located in an area behind an order entry station opposite the customer area" (Visit Your Local Village Bakery; The photograph shows a display area with shelving that is located in an area behind the counter at which the customer may place an order which is opposite from the customer area on the other side of the counter).

As per claim 8, the MontanaMills.com and Price combination discloses all of the elements of the claimed invention but fails to explicitly disclose "the transparent portion extends downward to a height of approximately three feet to thereby allow children to view actions within the fresh dough facility".

It would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the bakery of the MontanaMills.com and Price combination to extend the transparent portion downward to a height of approximately three feet, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

As per claim 9, MontanaMills.com further discloses "the fresh dough facility includes a table positioned adjacent to the partial-wall" (Visit Your Local Village Bakery; The photograph shows a table that is adjacent to the partial wall on which the bakers are preparing the dough).

As per claim 10, MontanaMills.com further discloses, "the fresh dough facility is located in an area adjacent to an entry vestibule of the bakery café" (Visit Your Local Village Bakery; The photograph displays an empty waiting area for customers that is a vestibule area which is located adjacent to the fresh dough facility where the dough is handled by the bakers).

As per claim 11, MontanaMills.com further discloses "the fresh dough facility is located intermediate the entry vestibule and the display area" (Visit Your Local Village Bakery; The photograph displays an empty waiting area for customers that is a vestibule area which is located adjacent to the fresh dough facility where the dough is handled by the bakers. The fresh dough facility is located in between the vestibule area and the area where the breads are displayed).

As per claim 12, the MontanaMills.com and Price combination discloses all of the elements of the claimed invention but fails to explicitly disclose "the partial-wall has a height of approximately five feet".

It would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the bakery of the MontanaMills.com and Price combination to include a "partial wall that has a height of approximately five feet", since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

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4. Claims 2 and 4, are rejected under 35 U.S.C. 103(a) as being unpatentable over MontanaMills.com in view of Price, as applied to claim 1 above, and further in view of Kelley (2001).

As per claim 2, the MontanaMills.com and Price combination discloses all of the elements of the claimed invention but fails to explicitly disclose "fulfilling the order comprises making a café sandwich using baked artisan bread". Kelley discloses a bakery and casual dining restaurant that "makes a café sandwich using baked artisan bread" (pg. 1, ¶ 3; via at the cafés sandwiches are served as well).

Therefore it would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the bakery of the MontanaMills.com and Price combination to include "making sandwiches using the baked artisan bread" as taught by Kelley since bread is used in making sandwiches and a bakery will have fresh bread that can be used for making sandwiches.

As per claim 4, the MontanaMills.com and Price combination discloses all of the elements of the claimed invention but fails to explicitly disclose "fulfilling the order comprises making a soup bowl using baked artisan bread". Kelley discloses a bakery and casual dining restaurant that "makes a soup bowl using baked artisan bread" (pg. 1, ¶ 3; via soups are served in sourdough bread bowls).

Therefore it would have been obvious to one of ordinary skill in the pertinent art to modify the bakery of the MontanaMills.com and Price combination to include "fulfilling the order comprises making a soup bowl using baked artisan bread" as taught by Kelley since the soup bowl made out of bread would add to the presentation of the soup order.

5. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being obvious over the MontanaMills.com in view of Price Combination, as applied to claim 1 and 5 above, and further in view of Coleman et al. (US 2005/0273343).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

As per claim 3, the MontanaMills.com and Price combination discloses all of the elements of the claimed invention but fails to explicitly disclose "the baked artisan bread used to make the café sandwich is staged at a food product preparation station". Coleman et al. discloses a bakery-cafe where "the baked artisan bread used to make

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the café sandwich is staged at a food product preparation station" (pg. 1, ¶ 10, via food preparation and food staging area).

Therefore it would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the bakery of the MontanaMills.com and Price combination to include the "food product preparation station" as taught by Coleman et al. since such would be useful in preparing the customer orders.

As per claim 6, The MontanaMills.com and Price combination discloses all of the elements of the claimed invention but fails to disclose "the shelving comprises wire baskets". Coleman et al. discloses a bakery-café having "the shelving comprises wire baskets" (pg. 1, ¶ 11; via wire shelves/baskets).

Therefore it would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the bakery of the MontanaMills.com and Price combination to include the "wire baskets" as taught by Coleman et al. since such would be another way to display the fresh baked artisan breads of the bakery.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over MontanaMills.com in view of Price, as applied to claim 1 above, and further in view of Jameson (2003).

As per claim 7, the MontanaMills.com and Price combination discloses all of the elements of the claimed invention but fails to explicitly disclose "the customer area comprises customer seating". Jameson discloses a bakery and casual dining restaurant having a "customer area comprising customer seating" (pg. 2; the

photograph shows a customer area with customer seating located inside of the restaurant).

Therefore it would have been obvious to one of ordinary skill in the pertinent art to modify bakery of MontanaMills.com to include the customer area with customer seating as disclosed by Jameson since customers may like a place to sit while they are waiting for their orders to be filled.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Galleyline.com discloses a cafeteria system having a partial wall with a transparent portion behind which food is prepared. Christensen (2002) discloses a bakery-café. Searcy (4,154,027) discloses a store arrangement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CANDICE D. CARTER whose telephone number is (571)270-5105. The examiner can normally be reached on Monday-Friday (7:30-5:00) with First Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynda Jasmin can be reached on (572) 272-3033. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CDC

/Lynda Jasmin/

Supervisory Patent Examiner, Art Unit 4127